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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council Resolution 1996/31.

[11 January 1999]

GE.99-10745 (EXT)

Administration of justice in Peru

1. The International Federation of Human Rights Leagues, dismayed by the human rights situation in Peru 1/, more specifically regarding the adminstration of justice, organized an international investigation mission from 3 to 11 August 1998, in co-operation with APRODEH (Asociación Pro-Derechos Humanos). The mission's remit was to evaluate the situation of Peru's Judiciary, the functioning of criminal justice and the status of human rights, especially in prisons. During the mission, members met with numerous representatives of the authorities and the country's main institutions, as well as with prisoners and their relatives and prison officials.

Dismantling of democratic institutions

2. The institutions are subject to constant manipulation. The desire to control tne Judiciary and artifically create juridical conditions for a third election of the current President, Mr. Fujimori, has induced a section of the political class to dismantle the democratic institutions. Hence, the Constitutional Court, down to four of its seven members, owing to the removal of three of them (authors of a decision that would have blocked the re-election), is incapable of ensuring the constitutionality of the laws, for lack of the necessary quorum. Any constitutional and legislative apparatus that guarantees the independence of the Judiciary has been neutralized by the creation of a parallel structure, the Judiciary Executive Commission with an Executive Secretary (which exist in identical form where the Bench is concerned) that together reduce the role of the National Judiciary Council to a mere sinecure. The Council has been stripped of its power to nominate and remove magistrates, leaving the way open for permanent intervention by certain sectors of political power in the operation of the judicial machinery, even in its purely court functions. The system of selection, nomination and removal of "provisional" magistrates thwarts the principles of permanence of the Judiciary and of natural judge.

3. The Judiciary Inspection Board, on the pretext of fighting corruption, constitues a court information network that is tantamount to an internal intelligence service. These "anonymous" inspectors, themselves recruited from within the judicial apparatus, are supposed to oversee the conduct of magistrates, lawyers, officials and law students.

4. The court function is performed with no guarantee of independence or impartiality and magistrates who hand down rulings unpalatable to certain sectors of power, notably the military sector, are transferred, displaced or removed from office.

Inaccessibility of a fair trial

5. The guarantee of a fair trial, as provided for in the international instruments ratified by Peru (the International Covenant on Civil and Political

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1/ At the forty-seventh session of the Sub-Commission, the IFHR had already expressed its concern at the impunity and continued violation of human rights in Peru.

Rights and the American Convention on Human Rights) and, to a lesser extent, by the Peruvian Constitution itself, does not currently exist in Peru. It is obstructed by two factors:

a) systematic recourse to special laws and military courts;

b) excessive enforcement of the Code of Penal Procedure to the detriment of rights of defence.

6. The special laws of 1992 concerning high treason and terrorism, followed by the June 1998 decree-law on aggravated terrorism, confer additional competence on military tribunals which is incompatible with the guarantee of trial by an independent and impartial tribunal. The exercise of military justice is, consequently, not restricted to crimes committed by members of the military. The vagueness and uncertainty evident in the definition of those crimes has led to the creation of a discretionary option exercised by the police, who steer the procedure either towards military courts or the ordinary courts. This situation results in denials of competence which lead to abnormal delays and sometimes to violation of the right not to be tried more than once for the same acts.

7. Access to a lawyer during police custody is hedged about with enormous difficulties, which assume particular importance when military tribunals are involved. Furthermore, the Government Procurator's Office is not really represented at interrogations. Police custody prior to appearance before an examining magistrate therefore becomes a period of virtually total isolation, thus facilitating the use of pressure and even torture. In such conditions, it is not surprising that many confessions are obtained by torture, without the effective presence of either a lawyer or the Procurator's Office. Communication between the accused and counsel is impeded in the prison setting and interpreters are not provided for indigenous inhabitants most of whom do not speak Spanish. The prinicple of cross-examination both of witnesses and co-defendants is not observed. Court rooms have been built inside all prisons. The location of prisons, usually several kilometres outside the town, and the size of the court rooms effectively exclude the public.

Inhumane prison conditions

8. The conditions in which all prisoners are kept include crowding, lack of medical treatment, inadequate food and lack of access to employment and education. Even worse are the conditions in high-security prisons, where prisoners are subjected to an inhuman and degrading prison regime: their cells are insalubrious, unlit, lacking in minimal hygiene and offer no facilities for keeping in minimum physical shape. They also suffer from limited access to walking areas, family visits, information and contact with the outside world. These conditions cannot be blamed on economic difficulties but, rather, on the desire to inflict punishment in extreme conditions, to the point of a prisoner's psychological and even physical destruction. The location and architecture of

the Yanamayo and Challapalca detention centres were deliberately chosen with that in mind 2/.

9. Where minors are concerned, decree-law 899 of May 1998 (which provides for imprisonment from three to six years for serious offences committed by minors between the ages of 12 and 18) flouts the provisions of article 37 of the Convention on the Rights of the Child (ratified by Peru, however) which considers that the arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest period of time. In Tocache, detention prior to appearance before a magistrate (that may never take place)is spent in a collective jail in which men, women and children are herded together, sometimes for several days.

Examination of petitions, review of decisions and reparation to innocent victims

10. The hope of openness heralded by the creation of the paradoxical "pardon commission for persons convicted of terrorism or high treason" on the basis of "insufficent evidence, which suggests tht they had no connection with terrorist sympathizers, activities or organizations", must not recede. Despite the opaqueness 3/ and slowness of its procedures, the limited duration of its mandate and the inadequacy of its competence (which should be extended to persons who received excessive sentences and to those - sometimes whole village communities - who, when they are the subject or searches or warrants of arrest, are obliged to go underground and become vulnerable to blackmail), this commission is at present the only alternative to terrible injustices. Those pardoned by this ad hoc commission are yet to receive any reparation or assistance from the authorities, even though their innocece has been recognized.

Failure to respect international recommendations and decisions

11. Peru is the Latin American country with the most proceedings against it before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. None of the Commission's recommendations concerning individual cases have been implemented by the Peruvian Government and the opinions of the United Nations Human Rights Committee have suffered the same fate.

2/ Situated 4,200 and 4,800 metres above sea level, these establishments are built of concrete and lack heat insulation, heating, hot water or even running water.

3/ Prisoners are not informed of the status of their files. Petitions are filed away unknown to the prisoner.